

Karen Kennard:

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Nikki Lewis Simon:

In our fourth episode, we continue our conversation with Greenberg charm shareholder. Karen Kennard. This courageous conversation is particularly insightful as Karen shares her personal connection to criminal justice reform. She and her family have been involved with the innocence project of Texas for more than a decade Karen's oldest brother, Tim Cole was wrongfully convicted of rape more than two decades ago and died in prison in 1999 at the age of 39 in 2009 DNA testing proved his innocence and he was the first person in Texas to receive a posthumous exoneration and a posthumous. Pardon? In addition, the Texas exoneration compensation system and the Texas innocence commission are named in his honor.

Nikki Lewis Simon:

Let's fast forward a little bit more to talk about how it came to light about Jerry Wayne Johnson and the aftermath and the appeals, um, and navigating the criminal justice system, post verdict and sentencing. We got the guilty verdict and we got the, we thought we might get, you know, since it had been offered, but the jury came back with a 25 year sentence and we immediately started an appeal. And we, we were hopeful that, you know, we would get it overturned. It took two years and believe it or not, we've got a successful ruling in the case, but then they re they ruled that it wasn't harm, you know, and that's a technical term that even though it was, it was, it was just not a harmful error on the part of the court. So, and then that was devastating. And so we continued appeals and then, and then we just talked, my mom started like writing letters.

Karen Kennard:

My mom would write letters to ABC news 2020. I mean, she just went on this incredible like letter writing campaign. I don't know if people remember Kinko's, but I think my mom lived at Kinko's. She would write letters to any and everybody, and my brother would too, you know, but she wrote a lot of letters. And then I think in the mid nineties, we start hearing about there's this group called Centurion ministries that did we start hearing about, you know, um, DNA and exonerations. And then we started hearing about the innocence project of New York and very shy and, and, and things like that. And, you know, there were lots of letters and those letters would come back to us in a really good way later on. And then my brothers started coming up for parole. He came up the first time in 19, I want to say, 1991, between 1991 and 1993. And, you know, we had our lawyer prepare it and help with that. But little did we know at that time he had to admit to the crime and express remorse and he refused to do that.

Karen Kennard:

That was really hard. And I can remember one of my brothers just, he was just really frustrated and it was just like, Tim, just to say it, just say it and come home. And I remember reading a letter he's like, I am not going to do that. I'm not going to something I didn't do that is no longer the case anymore for people who, with innocence clients. But at that time you had to, you had to do that. You had to, those two things admit and express remorse. So th th that, that, yeah,

Nikki Lewis Simon:

that was part of the package. And so can you talk about then the DNA evidence and fast as due to the exoneration?

Karen Kennard:

Lots of paroles. And then my brother dies in 1999 of an asthma attack. So in 2007, uh, my mother received a letter, uh, addressed to my brother at our house. Um, we lived in the same house. My mom was in same house since I was probably in fourth grade, uh, a letter to my brother. And the letter is from Jerry Wayne. Yeah. Who Eric Brown identified in my brother's trial. And, uh, it's a confession to my brother that Jerry Wayne Johnson says that he indeed was the person who committed the right that my brother was convicted of. And that he would like to help my brother clear his name and, you know, get off of whatever parole and, you know, help him do all these things. One of the most interesting things about that letter is also that jury Wayne Johnson indicates that he's been trying to confess since 1995, which is four years before my brother died. That was the most gut-wrenching part of it. You know, we don't know what to do. So what my mother does cut my mother's, you know, she's been writing all these. So what she does is that she copies the letter and she sends it to the Lubbock newspaper, because let me just say the stories they wrote during my brother's trial were not nice. They were hurtful. They were very hurtful, very, very hurtful. And so she decided to try to get some attention to this confession, to help determine and clear my brother's name, because that's all she ever wanted now that he was deceased because that's all he ever wore. And that worked, they ran a series of stories. It connected us to the innocence clinic in Lubbock. The innocence clinic was one of the organizations that Jerry Wayne Johnson had written several letters to. He had also written to the Lubbock da. He had written to the courts in Lubbock. He had sent a letter to my brother's former lawyer. He had written several letters to the lots of people in Lubbock confessing and asking to help clear my brother's name, but, you know, let me be very clear Jerry Wayne Johnson is a despicable individual. He is in prison for life where he deserves to be. But the one thing that I learned in all of this, the only good thing he ever did was that before he died, he fessed up to this crime. And that's the only thing that I care about, relate it to him.

Nikki Lewis Simon:

And so can you talk about how this then, uh, became before the governor? Just a little bit, we've got about 15 minutes. So I want to certainly give folks an opportunity to ask some questions, but can you talk about how this then had to go through that special appeal process? That didn't, it was on the books, but it didn't really ever get used.

Karen Kennard:

Um, the innocence project got involved in this case, we found the DNA, thank God for the Texas department of public safety, the, the, the rape kit had been preserved since 1985. They ran the DNA, you know, w we knew came back. It was Jerry Wayne Johnson, and my family petitioned the court in Lubbock to exonerate my brother. And that court denied that petition through the work of some very good lawyers at the innocence project. They came up with this very novel idea, using a rarely used legal procedure here in Texas called court of inquiry where any district court in the state of Texas can conduct this type of procedure and a wonderful judge here in Travis county, Austin, Texas, judge, Charlie Baird, convened a court of inquiry here to make some fundings regarding my brother's innocence. It was a two day hearing in the court of inquiry, and he brought Jerry Wayne Johnson here. The victim was also here, and my mom testified in that hearing and he made a finding of my brother's innocence and exonerated him in that hearing.

Nikki Lewis Simon:

And so that was almost 20 years to the date or more.

Karen Kennard:

My brother died in 1999. He was convicted in 1986, September of 1986. And the court of inquiry was in 2009.

Nikki Lewis Simon:

And so given all of that, that pasta was part in an exoneration through this extraordinary court of inquiry, in terms of just bringing this forward. I know your family has done a lot to work with the criminal justice system, things that your mom sort of champion to try to get, you know, new relief in legislation. But can you share with us why this has been important to you all as a family, your mother, your siblings? I think that minute it's fine.

Karen Kennard:

My brother was a good man. He was not perfect. Nobody's perfect. But he was a good thing. He taught me how to tie my shoes. He told me how to ride a bike. He gave me dating advice. He was a man of principle and integrity. And so it was important because he deserved better from a system that failed him, a system that we tried to navigate as best. We knew how. And so we have tried to make that system better for others, but honoring him through working through that system, my mom died in 2013 and I would go home for the holidays. And there were always be exonerees at our house. And they called her mother just like, you know, we did, you know, and that honor my brother. And so we did it just because that's what he deserved.

Nikki Lewis Simon:

Well, we've got about 10 minutes left and there are certainly folks who are extending their hearts to you and your family, Karen, you know, what can we do in your opinion to correct the injustices suffered by your brother? I mean, you can talk maybe just very briefly, because I know we're going to tease a another segment, but if you can talk a little very briefly about some of the compensation things that your family has worked on along with your legislators.

Karen Kennard:

Well, you know, for us innocence is our thing, but there are lots of areas in the criminal justice system that need so much work. This is my opinion. Our system needs work. It is not working very well. And so anybody listening in today find what speaks to you in the system, from my perspective, the fact that race plays such it out weight, it has such an outdated impact in that system. We've got to find a way to make that stop. I don't have the answer to that, but I can just tell you, we've got to find a way to deal with that. So find what speaks to you. But I think that if, if all of us in some way, work on it, we can begin to impact the system. So that it's so that it works. But right now it does not work in any area of it. It just doesn't work. And so I, I would, I would just say, find a part of that system to do some work.

Nikki Lewis Simon:

And we're going to certainly talk more about that. And is this work that your family undertook, and I know when we were preparing for this courageous conversation, you talked about your mother being that matriarch. I mean, she, to your point, she's writing, she is, she is out there and she's telling you all

as her other baby chicks. Now you all go to school, you get your education, mama take care of this, you know?

Karen Kennard:

And so I know I hear, my mother is still in my ear. I hear my mother with my ear and I say the same things to my nieces and nephews too. So, you know, when all of this started, I almost dropped out of law school because I was oh, angry. You know, I was a second year lost student when my brother got convicted and I was just like, I'm not doing this. This is, you know, I'm not doing this. And I remember my mother saying, this is not your battle. Your dad and I are going to deal with it. Your job is to go chase your dreams. My brother was a prolific letter writer. I mean, we have hundreds of letters from him. I'm in the process of trying to get those digitized and, and, and, and somehow saved. And we're going to try to find somebody to keep those, his words to me is that do not, do not do that.

Nikki Lewis Simon:

Do not all caps do not. You've wanted to be a lawyer since you were in third grade. And so it was my mother. It was my brother and my other siblings. You know, some of them were not doing what they needed to do, but it was her more than any body. And let me just tell you, I can't imagine what she was going through, but I do know it was painful, but she went through it. He did not stop. She sacrificed a lot. Even after he died, she knew that she was going to clear his name no matter what. Well, she thought he was going to come home. Even after all of those pills were over, her deal was making sure he was going to have a house to live in. You know, one of the rental houses, he was going to have a place to live.

Nikki Lewis Simon:

He was going to work the beauty shop or what, one of the businesses she was preparing, what he could do. And then he died. And I was like, she's going to clear his name. I think this has been a hard year. I think probably a hard year for everybody. But for me, some of the challenges that I've faced this year, and when I think about my practice and what I'm going, I think of how my mom, some of my challenges, failing comparison to some of the things that she went through. And that just keeps me focused on I'm going to do what I need to do and not give up. I have a sign in my office, never give up, never give up.

Nikki Lewis Simon:

A couple of questions then Karen, for you, as we, we have about six minutes left. So it's sort of two questions. And I think you've answered one, which is how have you managed not to be angry and concerned that this will happen again. And maybe it's that faith that your mom instilled in you and your siblings and, and, and not giving up. Perhaps.

Karen Kennard:

let me just say, I've never said I wasn't angry. I mean, I'm not angry anymore. Uh, I miss my brother. I mean, I do, I, you know, my brother was a political science major. Like I was, you know, we talked about 10 more years together, not practicing together, but, um, but you know, I learned a long time ago that you can't hold on the anger. Um, my minister might be on this when you get that pass. Yeah. You'll get them, you know, we're a family of faith, you know? Um, so I'm not, I don't hold on to the anger, but, um, there was never really any accountability, but the police officers, in my opinion, and who were involved in my brother's case, you know, that doesn't always sit right with me. You know, my mother would just say, it's past, let it go. She was much more mature in her face. And, and I work, I continue to have to work through them. It's a process for me. I don't think about it a lot, that there are times when I, you

know, when I'm looking through pictures and, um, I just, you know, I just try to put it in perspective, but there, there, Tom, when I, I go to places, I should not go. I had good examples set for me. I try to always look forward and not back, but I can't tell you, I don't, I can't tell you that. It's all good, but it's mostly good.

Nikki Lewis Simon:

Right. So a couple, one or two more questions. So one, do you, do you believe that more minority prosecutors in the system may assist in changing this?

Karen Kennard:

You know, that's a difficult question from my perspective, from what happened. In my brother's case, we didn't see the independence of a prosecutor. We saw a case made in the police department that was just carry through by the prosecution. So it might, if there is some independence, but just from, just from my personal perspective, that's what we saw. But, you know, the, the criminal justice system is multifaceted. That could be because a minority perspective is a much more needed perspective in that system. And our perspective, I think, adds a layer of difference that that system, I think, has lacked over a long period of time. So that might be something that I think could potentially add some benefit, but from my perspective of what we experienced, um, it was not beneficial for us.

Nikki Lewis Simon:

Did anyone ever explain why they didn't immediately check the DNA when the confession was brought to their attention? Or I don't know whether we know how that works. You mean in 2007 or 1997, perhaps? Yes. Harry's points I would think. Yeah.

Karen Kennard:

So w when my mom got the letter in 2007, and then we found out that Jerry Wayne Johnson had been confessing since 95, it was, it was, it was a mystery. It was interesting. We found out that there had been all these court orders where they had just like dismissed his letters. There were like actual, there was a dismissal in the state court, there was a dismissal in the federal court. So we don't really know, you know, and, and, and after a while, you know, it didn't really matter, but no, there was really no real explanation at the end of the day for me, after my brother died well, before my brother died, you know, I used to have a prayer that, you know, just one of my brothers were home and he had resigned himself that he was going to serve 25 years. And I had gotten used to that. Then I just wanted him to come home. And when he died, my prayer was that my prayer then became, I wanted my brother's name cleared before my mother died.

Nikki Lewis Simon:

So very briefly, I want to give you a chance to say a few words and then we'll wrap up.

Karen Kennard:

Well, I just, um, I just want to thank everybody for their interest and for listening in today, this is the first time, like I said, that I've talked publicly about my brother and his story, 2020, has been a difficult year for all of us? And I just encourage everybody to find that help us, whatever it may be to try to bring a little light and love to somebody else. I mean, it's, um, it's worth it, you know, so thank you.

This transcript was exported on Jul 21, 2021 - view latest version [here](#).

Nikki Lewis Simon:

Thank you so so much. Thank you. Thank you, Karen, for sharing your story and Tim's story and, uh, this courageous conversation. So if you are interested in learning more about criminal justice reform, please keep your eye out for an upcoming program where we're going to go into more detail with Karen and others on how individuals can get involved. So thank each of you who joined us today, and we look forward to hosting you again very soon. Thank you, Karen. Thank you.

Nikki Lewis Simon:

Thank you for listening tune in to future podcasts. Episodes of GT drives, dynamic dialogues. As we continue our courageous conversation series.